

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1053 OF 2005

Pramod Makanji Mehta ..Appellant.

Vs.

The Municipal Corporation of
Greater Mumbai ..Respondent.

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Shuran Jagtiani with Ms.Shweta Patwala i/b
M/s.Divya Shah & Associates for the Appellant.
Ms.Geetanjali Joglekar for the BMC.

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CORAM : DR.D.Y.CHANDRACHUD, J.

29th November 2005.

P.C. :

1. Following a notice to show cause under Section 351 of the Mumbai Municipal Corporation Act, 1888 an order of demolition was passed. The Appellant was furnished an opportunity to submit a representation.

2. There were in all six items of work which had been carried out by the Appellant unauthorizedly which have been set out in the schedule to the notice under Section 351. In his reply dated 30th September, 2003 the Appellant stated that the items at Sr.Nos.3, 4 and 6 were 'temporary sheds constructed for weather protection' and that the Appellant is in the process of removing them. In so far as item 5 was concerned, it is stated that it was a temporary washing place, but which also shall be removed. Finally it was submitted that a proposal for regularization was being submitted to the Executive Engineer (Building Proposals).

3. On this reply of the Appellant, the Learned Trial Judge was justified in holding that the application for regularization proceeded on the basis that the work was unauthorized. The Appellant in his reply voluntarily agreed to remove the work of items 3, 4, 5 and 6. However, it has been submitted that in so far as the work at item 6 is concerned which consists of a structure admeasuring 20 ft x 10 ft. plus 15 ft. x 11 ft., the reply dated 30th September, 2003 inadvertently

stated that the work would be removed and that accordingly the plaint is amended to raise such a submission. The learned Trial Judge declined to accept the plea on the ground that the Motion had not been amended.

4. In order to consider whether any case has been made out even prima facie in respect of item 6 of the show cause notice, I permitted counsel appearing for the Appellant to demonstrate before the Court some material showing authorization of the structure. Ex facie, the completion certificate at Exh.B does not establish the authorization of the structure. The fact that the structure has been assessed similarly is no proof of its being authorized or of its being a structure in accordance with the sanctioned building plan.

5. On behalf of the Appellant it has also been urged that the work which was complained of in the notice to show cause cannot be regarded as a part of a building and that therefore, the provisions of Section 351 of the Mumbai Municipal Corporation Act, 1888 read with Section 342 would not be attracted. There is no merit in the submission.

Section 351 enables the Corporation to exercise its powers in respect of a building or the execution of any work as described in Section 342, where work is commenced contrary to the provisions of Section 342 or 347. Section 342 inter alia relates to the making of any additions, alterations or repairs to a building. The expression "building" is defined by Section 3(s) to include a house, out-house, stable, shed, hut and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever. Having regard to the schedule contained in the notice to show cause, there can be no doubt that what has been carried out is the construction of work of a nature that would fall within the meaning of Section 3(s) and therefore within the purview of Sections 342 and 351 of the Act. The work which is carried out is unauthorized.

6. In these circumstances, the Learned Trial Judge is not in error in dismissing the Motion. The Appeal is dismissed. However, the dismissal of this Appeal will not preclude the Appellant from pursuing the application for regularization.